

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

F.A. 110 of 2019

Dibyendra Nath Banerjee

Versus

Samir Kumar Ghosh & Ors.

For the Appellant : Mr. Suddhasatva Banerjee, Adv.
Mr. Sounak Bhattacharyya, Adv.
Mr. Subhrangsu Ganguly, Adv.

For the Respondents : Mr. Souradipta Banerjee, Adv.
Mr. Arnab Roy, Adv.
Ms. Fatema Hassan, Adv.

Hearing Concluded On : 15th September, 2022

Judgement On : 28th September, 2022

Siddhartha Roy Chowdhury, J.: Challenge in this appeal is to the judgement and decree passed by learned Judge, 10th Bench of City Civil Court, Calcutta in Title Suit No. 1833 of 2006 dated 16th May, 2017.

Briefly stated, the plaintiffs/respondents herein filed a suit for declaration and permanent injunction against the appellant/defendant contending, inter alia, that the plaintiff/respondent no. 1, Samir Kumar Ghosh was inducted as tenant in respect of two rooms, one kitchen and separate bath privy on the ground floor of Premises No. 59/2, Raja Rammohan Sarani P.S. Amherst Street, Kolkata-700 009, at a monthly

rental of Rs. 50/- payable according to English Calendar month by erstwhile landlady Labanya Banerjee. During her life time being satisfied with the good behavior of the plaintiffs, Labanya Banerjee bequeathed her property by executing a Will in their favour. Labanya Banerjee died on 14th December, 2006 and after her demise plaintiffs started occupying the entire half portion of the suit house, which was under the occupation of Labanya Banerjee. However, the defendant on 13th December, 2016 along with some anti social elements made an unsuccessful attempt to dispossess the plaintiffs, on 14th December the plaintiffs were put under threat of dispossession again. Hence by filing the suit the plaintiffs/respondents prayed for decree declaring that the plaintiffs are the absolute beneficiaries in respect of half portion of Premises No. 59/2, Raja Rammohan Sarani, Kolkata-700 009, and for further declaration that the defendants do not have any right to occupy forcefully the half portion of the said house in suit, coupled with prayer for permanent injunction restraining the defendant and his men and agent from dispossessing the plaintiffs.

The defendant Dibyendra Nath Banerjee contested the suit by filing written statement denying all material allegations made against him. It is specifically denied that the plaintiffs ever used to occupy the suit premises as tenant under Labanya Banerjee or that Labanya Banerjee executed any Will bequeathing her share in the suit house in favour of the plaintiffs. It is asserted that the plaintiffs taking advantage of the old age of Labanya Banerjee started residing in the suit house as licensee. After the demise of Labanya Banerjee the defendant and his brother and sister

acquired the property by way of inheritance. The plaintiffs illegally kept three rooms on the first floor of the house under lock and key. It is contended further that no attempt was made by the defendant to dispossess the plaintiffs in any manner whatsoever.

Considering the pleadings of the parties learned Trial Court framed seven issues and was pleased to answer the issues in favour of the plaintiffs consequently the suit was decreed but in part. Without granting any decree for declaration about the status of the plaintiffs as beneficiaries, learned Trial Court restrained the defendant from disturbing or interfering with and or obstructing the peaceful possession of the plaintiff in the suit premises, until evicted by due process of law.

Being aggrieved by and dissatisfied with such judgement and decree the defendant preferred this appeal.

Assailing the impugned judgement Mr. Suddhasatva Banerjee learned Advocate for the appellant submits that learned Trial Court passed the impugned judgement without considering the evidence on record. Learned Trial Court had no reason to hold that the plaintiffs/respondents were inducted as tenant by Labanya Banerjee in respect of the suit premises, when as a matter of fact, the plaintiffs trespassed into the suit house.

Refuting such contention learned Advocate for the respondents submits that the plaintiffs admittedly are in possession of the suit property as tenant under the erstwhile landlady Labanya Banerjee. The defendant/appellant also admitted such status of the plaintiff no. 1 while adducing evidence. Exhibit-3 the tenancy agreement is eloquent on the status of the plaintiff no. 1.

Drawing our attention to the cross-examination of PW 1 Samir Kumar Ghosh, learned Advocate for the respondent submits that the tenancy of the plaintiffs/respondents is admitted by the defendant/appellant who stated that tenancy is limited to two rooms on the ground floor. PW 1, Samir Kumar Ghosh during cross-examination stated "It is true that my tenancy is limited to said two rooms on the Ground Floor. Our Landlady - Labanya Prava Banerjee died in the month of December, 2006." So is the evidence of PW 2. Mr. Banerjee, learned Advocate for the respondent submits that learned Trial Court was justified in granting part decree, pending the probate proceeding. Though, it is fact that Labanya Banerjee bequeathed her property by executing a Will, so long probate proceeding is pending it cannot be declared that the plaintiffs are the beneficiaries in respect of the suit property.

Upon perusal of the evidence on record we find that the status of the plaintiffs particularly plaintiff no. 1 Samir Kumar Ghosh has been established as tenant in respect of ground floor of suit house. It has now become settled principle of law by several judicial pronouncement that possession howsoever illegal must be protected till the occupant is evicted by due process of law.

Here in this case Exhibit-3 the tenancy agreement together with Exhibit-1 the rent receipt inspire confidence in us to hold the plaintiff no. 1 is the tenant and he has been possessing the suit property together with his family members as tenant. Such possession deserves protection so long they are not evicted by due process of law.

Under such circumstances, we do not find any reason to interfere with the impugned judgment. The appeal is not accepted being devoid of merit.

Consequently the appeal stands dismissed.

Department is directed to send down the Lower Court Records immediately.

Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)